that the agent cannot act for both parties, see the following: *Meyer* v. *Hanchett,* 43 Wis. 246; *Scribner* v. *Collar,* 40 Mich. 375, 29 Am. Rep. 541; *Farnsworth* v. *Hemmer,* 1 Allen (Mass.) 494, 79 Am. Dec. 756; *Rice* v. *Wood,* 113 Mass. 133, 18 Am. Rep. 459; *Walker* v. *Osgood,* 98 Mass. 348; *Pugsley* v. *Murray,* 4 E. D. Smith 245; *Everhart* v. *Searle,* 71 Penn. St. 256; *Raisin* v. *Clark,* 41 Md. 158, 20 Am. Rep. 66. In all these cases the facts are closely related to those in the case under consideration, and still it was held in all of them that the agent could not recover. The following are some of the cases holding that such an agent was simply acting as middleman and consequently entitled to recover from both parties in spite of the fact that they did not know of his acting in a double capacity. *Rupp* v. *Sampson,* 16 Gray (Mass.) 398, 77 Am. Dec. 416; *Knauss* v. *Brewing Co.* supra; *Herman* v. *Martineau,* 1 Wis. 36, 60 Am. Dec. 368; *Alexander* v. *Northwestern, etc., University,* 57 Ind. 66. In these cases the agent was simply to do some particular act. In *Scribner* v. *Collar,* supra, speaking of such cases the court said: "No doubt such cases may occur; but their exceptional character should appear clearly before they should be exempted from the general principle;" and *Walker* v. *Osgood,* supra, goes still farther: "Even if he had no authority to bind his principal, and was entrusted with no discretion in fixing the terms of the exchange, and his only service was to bring the parties together, he was bound to perform that service in the interest of the party who employed him." Hence, in order to establish the relationship of middleman between the parties it must be affirmatively shown that the agent has no discretionary powers. This was hardly done in this case. One is inclined to agree with JUDGE ROSS, dissenting, when he says, "The effect of the decision, therefore, it seems to me, is that an agent may act for a vendor in the sale of his property, his duty to the vendor being to sell it at the highest price, and at the same time, without knowledge of either of the principals, act as agent for the purchaser, his duty to him being to buy at the lowest price. Yet the law is, as I understand it, and as is stated in the opinion, that this cannot be permitted."

ASSIGNMENT FOR BENEFIT OF CREDITORS—MARSHALING ASSETS.—The Tanners' Leather Company made a common law assignment for the benefit of creditors. Certain creditors held promissory notes of the company, which had been indorsed by two persons, one being the treasurer, who, after the company's assignment, assigned to trustees to secure the payment of the notes, a contract for the cutting of bark on certain lands. *Held,* that where final satisfaction from the proceeds of the assigned "bark contract" was uncertain, and would necessitate delay, the general creditors could not compel the holders of the notes to resort to the proceeds of the "bark contract" before taking a dividend from the estate of the maker of the notes. *Carter* v. *The Tanners' Leather Co. et al.* (1907), — Mass. —, 81 N. E. Rep. 902.

The rule which the general creditors sought to apply here is "that if a party has two funds, he shall not, by his election, disappoint another who has one fund only, but the latter shall stand in the place of the former, or compel the former to resort to that fund which can be affected by him only. *Cheese-*

brough v. *Millard,* 1 Johns. Ch. (N. Y.) 409, 7 Am. Dec. 494. On the question whether creditors holding security should be compelled first to exhaust their security, and then be allowed a dividend on the unpaid balance, the courts are not in harmony. That they should be, see *Wurtz* v. *Hart,* 13 Iowa 515; *American Nat. Bank* v. *Branch,* 57 Kan. 27, 45 Pac. 88; *Amory* v. *Francis,* 16 Mass. 308; *Besley* v. *Lawrence,* 11 Paige 581; *In re Frasch,* 5 Wash. 344. *Contra, Logan* v. *Anderson,* 18 B. Mon. (Ky.) 144; *Third Nat. Bank* v. *Haug,* 82 Mich. 607, 47 N. W. 33; *Jervis* v. *Smith,* 7 Abb. Prac. (N. S.) 217; *Allen* v. *Danielson,* 15 R. I. 480, 8 Atl. 705, overruling *In re Knowles,* 13 R. I. 90. But the equitable rule that a creditor having a lien on two funds must exhaust that one upon which the other creditors have no lien will not be applied where it will work injury to the party having the double lien, *Gorman* v. *Wright,* 136 Fed. Rep. 164, nor where it will injure other parties, *Morrison* v. *Kurtz,* 15 Ill. 193. The rule will not be applied so as to prevent the creditor secured by a mortgage on the homestead, which can be subjected to the payment of debt only by consent of both husband and wife, from releasing his security and proving his claim pari passu with other creditors, *Dickson* v. *Chorn,* 6 Iowa (Cole's ed.) 19, 71 Am. Dec. 382. Where a lien creditor agrees with an assignee to permit the latter to sell real estate without prejudice to the lien creditor's right to prove his debt against either fund, his right to prove it against both funds remains unaffected, *In re Schaffner,* 1 Woodw. Dec. 187. A creditor is entitled to receive a dividend on the full amount of his claim, irrespective of any security he may hold, *People* v. *E. Remington and Sons,* 121 N. Y. 328, 24 N. E. 793. In the distribution of an assigned estate, lien creditors are let in pro rata with general creditors on the personal property, retaining their liens or the realty for the residue, *Appeal of Shunk,* 2 Pa. St. (2 Barr) 304; *In re Schaffner,* supra. In Maryland a creditor who holds collateral for his debt is entitled to participate in the distribution of the insolvent estate only to the amount of his debt remaining due after deducting the value of his collaterals, *Nat. Union Bank* v. *Nat. Mechanics' Bank,* 80 Md. 371, 45 Am. St. Rep. 350.

BONDS—BONA FIDE PURCHASERS—MANDAMUS—REDEMPTION OF BONDS.—A bona fide holder for value before maturity of a coupon bond, payable to bearer, presented the same to the State Treasurer and demanded a certificate of stock in exchange therefor under an act providing for the redemption of certain bonds and stocks of the state. The State Treasurer refused to make the exchange on the ground that said bond had been previously redeemed and surrendered to the State Treasurer, and thereafter had been stolen from the treasury vault by a clerk in the office. No marks to indicate cancellation, as required by statute, had ever been placed upon the bond. Mandamus was sought to compel the State Treasurer to make the exchange. *Held* (POPE, C. J., GARY, A. J., and GARY, KLUGH, PRINCE, and HYDRICK, Circuit Judges, dissenting), that mandamus would lie. *Ehrlich* v. *Jennings, Treasurer* (1907), — S. C. —, 58 S. E. Rep. 922.

When a municipality becomes a party to a negotiable instrument, by authority of law, it is bound by all the rules of commercial law applicable to